

FACTSHEET

TITLE: SPECIAL PERMIT NO. 1830, MANDARIN COURT COMMUNITY UNIT PLAN (as revised), requested by Richard Speidell, for 3 dwelling units, with requests to waive sidewalks, street lighting, paving, curb and gutter, drainage study and street and roadway elevations, and a modification of the subdivision ordinance to allow the Planning Director to approve the administrative final plat in accordance with the approved community unit plan, on property generally located at 4811 Mandarin Circle.

STAFF RECOMMENDATION: DENIAL

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/05/00 and 05/03/00
Administrative Action: 04/05/00; 04/19/00; 05/03/00; 05/17/00

RECOMMENDATION: Conditional approval of application as revised on 4/19/00 (5-2: Steward, Duvall, Taylor, Krieser and Newman voting 'yes'; Carlson and Bayer voting 'no'; Schwinn and Hunter absent).

FINDINGS OF FACT:

1. The original application which had public hearing on April 5, 2000, consisted of 4 dwelling units. The staff recommendation was denial. The applicant's testimony is found on p.10-11 and the additional information submitted by the applicant in support of this application is found on p.39-40. There was testimony in opposition (See Minutes, p.11-12), and the record contained two letters in opposition (p.41-44). On April 5, 2000, a motion for approval, with conditions, failed 3-3 (Schwinn, Newman and Duvall voting 'yes'; Taylor, Hunter and Bayer voting 'no'; Krieser, Steward and Hopkins absent). See Minutes, p.14-15. Administrative Action was held over until April 19, 2000.
2. Subsequent to the public hearing but prior to administrative action on April 19, 2000, the Planning Commission received eight additional letters in opposition (p.45-60).
3. On April 19, 2000, in response to the opposition, the applicant submitted a revised application for 3 dwelling units, with two letters in support from neighboring property owners (p.61-63). The Commission voted to reconsider based on submittal of the revised application, with new public hearing scheduled for May 3, 2000. (See Minutes, p.15).
4. The Planning staff recommendation to **deny** the revised application is based upon the "Analysis" and "Conclusion" as set forth on pp.5-6.
5. At the reopened public hearing on May 3, 2000, the applicant presented the revised application for three dwelling units (See Minutes, p.16). The record consists of one additional letter in support (p.64).
6. The testimony in opposition is found on p.16-17, and the record consists of two letters in opposition (p.65-66).
7. On May 3, 2000, a motion for conditional approval failed 2-4 (Schwinn and Duvall voting 'yes'; Hunter, Carlson, Newman and Bayer voting 'no'), and a motion to deny failed 4-2: Hunter, Carlson, Newman and Bayer voting 'yes'; Schwinn and Duvall voting 'no'). Taylor, Krieser and Steward were absent. Administrative Action was held over until May 17, 2000. (See Minutes, p.17-18).
8. After the reopened public hearing, one additional letter in opposition was received (p.67).
9. On May 17, 2000, the Planning Commission voted 5-2 to disagree with the staff recommendation and to recommend conditional approval of the revised application for three dwelling units (Steward, Duvall, Taylor, Krieser and Newman voting 'yes'; Carlson and Bayer voting 'no'; Schwinn and Hunter absent). (See Minutes, p.18-20).
10. The Site Specific conditions of approval required to be completed prior to scheduling this item on the Council agenda have been submitted by the applicant and approved by the reviewing departments.

FACTSHEET PREPARED BY: Jean L. Walker
REVIEWED BY: _____
REFERENCE NUMBER: FS\CC\FSSP1830

DATE: August 7, 2000
DATE: August 7, 2000

W44

DATE: April 22, 2000

A Community Unit Plan for 3 dwelling units, waive sidewalks, street lighting, paving, curb & gutter, drainage study, and street & roadway elevations, and a modification as provided in section 26.31.015 of the Land Subdivision Ordinance, to allow the Planning Director to approve the administrative final plat in accordance with the approved community unit plan.

Richard Speidell
3820 J Street
Lincoln, NE 68510

4811 Mandarin Circle

See attached legal description

2.19 Acres

R-3 Residential

One single family dwelling

To the north and east are single family dwellings on acreage lots,
to the south is vacant land,
to the west are ponds,
to the northwest single family dwellings on acreage lots.
The abutting land is all zoned R-3 Residential.

COMPREHENSIVE PLAN SPECIFICATIONS:

The Land Use Plan shows the site as Urban Residential.

The Community Vision includes a continuing commitment to neighborhoods:

Neighborhoods are one of Lincoln's great strengths and their conservation is fundamental to this plan. The health of Lincoln's varied neighborhoods and districts depends on implementing appropriate and individualized policies. In addition, the land use plan is the basis for zoning and other land development decisions. It should guide decisions that will maintain the quality and character of the community's established neighborhoods.

Goals include:

Preserve the character of rural and urban neighborhoods through maintenance of existing housing stock and encouragement of compatible design in new housing.

HISTORY:

On **January 14, 1957**, City Council approved the Mar-Ma-Ra-Lo Heights Final Plat to the north, which included the northern portion of Mandarin Circle as well as Pagoda Lane.

On **November 1, 1962**, City Council approved the Pioneer Heights Final Plat, which covered the south portion of Mandarin Circle.

During the **1979** Zoning Update this area was converted from A-1 Single Family Dwelling District to R-3 Residential.

On **December 19, 1994**, the City Council approved Special Permit #1498 and Preliminary Plat #94003 for the Pagoda Pines CUP, which allowed 7 dwelling units on the southeast corner of Pioneers Blvd and Pagoda Dr.

On **April 7, 1997**, the City Council approved the Antelope Commons Preliminary Plat located to the west of this site.

On **July 20, 1998**, City Council approved Special Permit #1722 and Preliminary Plat #98007 for the Pioneer Greens CUP, which allowed 86 dwelling units east of 84th from Mandarin Dr., change of Zone #3112, which changed the zoning on property east of S. 84th St. from AG Agricultural to R-3 Residential, and changed the southeast corner of S. 84th St. and Pioneers Blvd from AG Agricultural to O-3 Office Park, approved Use Permit #108, which granted the authority to develop 145,000 square feet of office space at the southeast corner of S. 84th St. and Pioneers Blvd., and approved Annexation #98011, which annexed the properties along Mandarin Circle, as well as land to the north, southeast and south.

On **September 9, 1998**, the Planning Commission approved the Antelope Commons Preliminary Plat and Final Planned Unit Development, however the developer has not completed the conditions of approval. Antelope Commons is located to the west.

On **April 26, 1999**, City Council approved Annexation #99003 on properties to the east and south, which annexed the Pioneer Greens and HiMark Estates areas.

SPECIFIC INFORMATION:

UTILITIES:

The proposal includes:

A community water well for the four lots. (However, the Public Works & Utilities, Fire and Health Departments have recommended connecting to the City water system. To provide City water the applicant could petition the City Council for a special assessment water district.)

The applicant proposed a draft hydrant using the 2 acre pond on the site. John Huff of the Fire Department indicated that the Fire Department is not equipped to pump from draft, but that it was possible with the final approval over any design by Public Works & Utilities and the Fire Department.

Connections to the City sanitary sewer system.

No storm sewers

No street lighting

TOPOGRAPHY:

The site slopes to the west and drops 4' from the access to Mandarin Circle to the west of Lots 3 and 4 and continues to drop another 18' to the pond.

TRAFFIC ANALYSIS:

The abutting public street is graveled. The Land Subdivision Ordinance and the Street Design Standards require streets within and abutting a subdivision to be paved with curb and gutter. The request is to waive the paving, curb and gutter requirement. The Public works & Utilities Department is willing to waive the paving, curb and gutter in Mandarin Circle, but not for new private roadway named Mandarin Court that serves the four new lots.

PUBLIC SERVICE:

The nearest fire station is located near S. 84th & South Streets, however there are no fire hydrants to connect to unless a public water main is installed.

The Lincoln Fire Department reports that the area does not have City water and fire hydrants for fire protection services. LFD currently contracts with Southeast Rural Fire District for tanker water response (if available) in the event of a structure fire in this area. From LFD perspective the area should meet current design standards for subdivisions that include water mains and hydrants.

John Huff of the Lincoln Fire Department would consider pumping from the 2 acre pond even though it is not the best solution until City water mains are in place.

REGIONAL ISSUES:

Section 27.65.010 General Purpose of a Community Unit Plan states:

The purpose of this chapter is to permit and to encourage the creative design of new living areas, as distinguished from subdivisions of standard lot sizes and standard street systems, and in order to permit such creative design in buildings, open space, and their interrelationship while protecting the health, safety, and general welfare of existing and future residents of surrounding neighborhoods.

There is no neighborhood consent on how and when this neighborhood will be redeveloped. Until the neighborhood agrees on how and when the area will be redeveloped and public water service is available the proposed plan does not protect the health, safety, and general welfare of the existing and future residents of surrounding neighborhood.

ENVIRONMENTAL CONCERNS:

The 100 year floodplain and floodway of Antelope Creek covers a part of this site. The plans must show the boundary and elevation of the floodplain through the site and that the building area is raised above the elevation of the floodplain.

ANALYSIS:

1. Adding 2 dwelling units to this 2.19 acre lot is not in character with the other lots along Mandarin Circle. The average lot area for each of the proposed three lots is 31,799 square feet including open space. The other lots along Mandarin Circle average 47,138 square feet. The acreage lots in the neighborhood surrounding this site average 41,374 square feet each including the duplex dwellings adjacent to Pioneers Boulevard. The duplex dwellings are in the Pagoda Pines CUP located across Pagoda Drive from a church and adjacent to Pioneers Boulevard.
2. The average lot area for each of the proposed 3 dwelling units exceeds the minimum 5,000 square feet lot area of the R-3 zoning district including adjustments for an area of less than 5 acres as required in the Zoning Ordinance.
3. Unless a City water line is installed to serve the area fire protection will be limited to the availability of a tank truck from the Southeast Rural Fire District or possibly from the 2 acre pond if approved by the Lincoln Fire Department and Public Works & Utilities Departments.
4. The proposed number of parking spaces exceeds the 6 required.

5. The Public Works & Utilities Department does not object to waiving sidewalks, paving, curb & gutter in Mandarin Circle.
6. The Public Works & Utilities Department recommends that the lighting along Mandarin Court a private roadway meet the lighting requirements.
7. The Public Works & Utilities Department recommends that a grading plan be submitted along with a drainage study to determine if any storm sewer facilities are needed.
8. The Public Works & Utilities Department recommends that street grades be provided.
9. The Public Works & Utilities Department recommends that the size of the sanitary sewer and whether it is intended to be public or private be indicated on the plans.
10. The Public Works & Utilities Department recommends that the application include a preliminary plat and it needs to meet subdivision ordinance requirements.
11. Part of the site is covered by the 100 year floodplain and floodway of Antelope Creek.
12. The Public Works & Utilities Department recommends that the preliminary plat process not be waived.
13. No recreation plan was submitted.
14. The parking lots are not screened and street trees were not shown.

STAFF CONCLUSION:

1. The Public Works & Utilities Department, the Lincoln Fire Department, and the Lincoln Lancaster County Health Department find the community water well is inadequate for fire protection and recommend that the lots be served with City water and fire hydrants.
2. The 31,799 square feet, including open space, average lot area for each of the proposed three lots is not in character with the other lots along Mandarin Circle that average 47,138 square feet per lot.
3. ***Reports on the revised plan for three dwelling units from the Public Works & Utilities Department, Fire Department, and Health Department have not been received as of this date. Their reports may change this report. (**8/07/00 – The comments of Public Works, Fire and Health have now been received and are attached to the Factsheet. There were no changes to the conditions of approval set forth in this report**).***

STAFF RECOMMENDATION:

Denial

However, if after a public hearing the Planning Commission chooses to recommend approval the following are suggested conditions:

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Submit certified information from an abstractor or an attorney indicating the current record owner(s) of all land within the limits of this application.
 - 1.2 Revise the site plan to show:
 - 1.2.1 A public water main and fire hydrants to serve the new lots. (If public water is not required the pumping of water from the 2 acre pond must be designed to the satisfaction of the Lincoln Fire Department and the Public Works & Utilities Department.
 - 1.2.2 The size of the sanitary sewer and indicate whether the sewer line is private or public as approved by the Public Works & Utilities Department.
 - 1.2.3 Street lighting as approved by the Public Works & Utilities Department.
 - 1.2.4 A grading plan and drainage study as approved by the Public Works & Utilities Department. All elevations and topographic data for floodplain development must be in North American Vertical Datum (NAVD) 1988.
 - 1.2.5 Street grades as approved by the Public Works & Utilities Department.
 - 1.2.6 All information regarding development in a floodplain as approved by the Planning Department.
 - 1.2.7 Utility easements as requested by LES.
 - 1.2.8 The private roadway (Mandarin Court) designed to private roadway design standards.
 - 1.2.9 A recreation plan as approved by the Parks & Recreation Department.
 - 1.2.10 A screen for the parking lots that meets minimum design standards.
 - 1.2.11 A street tree plan for Mandarin Circle and Mandarin Court.
 - 1.2.12 The boundary of the plans match the boundary of the survey.

2. This approval permits:

3 dwelling units,

Waives sidewalks, pavement, curb & gutter, and street lighting in Mandarin Circle,

A modification, as provided in section 26.31.015 of the Land Subdivision Ordinance, to allow the Planning Director to approve the administrative final plat in accordance with the approved community unit plan.

General:

3. Before receiving building permits:

3.1 The permittee shall have submitted a revised and reproducible final plan and 5 copies to the Planning Department.

3.2 The construction plans shall comply with the approved plans.

3.3 A Final Plat shall be approved by the City or the Director of Planning.

STANDARD CONDITIONS:

4. The following conditions are applicable to all requests:

4.1 Before occupying the new dwelling units all development and construction shall have been completed in compliance with the approved plans.

4.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.

4.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

4.5 The City Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

Prepared by:

Ray Hill
Planner

SPECIAL PERMIT NO. 1830

MANDARIN COURT COMMUNITY UNIT PLAN,

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 5, 2000

Members present: Schwinn, Taylor, Newman, Hunter, Duvall and Bayer; Hopkins, Steward and Krieser absent.

Planning staff recommendation: Denial.

Ray Hill of the Planning staff submitted a memo from the Fire Chief indicating that the applicant has talked with the Fire Department about pumping water from the lake to fight fires. The Fire Chief is willing to consider this proposal.

Proponents

1. **Richard Speidell**, 3820 J Street, the applicant, stated that he is requesting approval of a subdivision of property at 4811 Mandarin Circle to sell lots for residents. Through the process, he has tried hard to address the community neighborhood issues and quality of life issues. He believes that he has done a good job of this. There are a number of staff comments which he does not have any conflicts with. He is happy to meet all of the conditions of approval, with the exception of hooking up to city water. This issue has been a sticky issue because of the neighborhood's reluctance to have a water district. They were forced into a sewer district just last year and have had to pay the assessment and the hookup, and the property owners believe the additional burden of a water system would be unacceptable.

Speidell supports the Public Works comments about fire protection, but do we have to have a water main and hydrants to provide that protection? To that end, he initially proposed the private well system to serve that need and found the flow requirements were much too high. Therefore, he is proposing pumping from the lake. The new structures being built in this neighborhood would have a greater degree of fire protection that does not involve tanker trucks with the creation of this subdivision through the CUP process. They will put a suction line down into the pond and route it up to the concrete of the drive so the fire truck could hook to that line and pump from the fixed resource. This means that he is not requesting a water district for this neighborhood, but would instead build a private system with the distribution portion being designed to city standards, so that if at some point the neighborhood was to become part of a water district, they could hook up to this distribution system. At that point they would separate the well from that system and use it for filling the pond or irrigation purposes.

In addition to fire safety, the staff's rationale for denial is compatibility with the existing neighborhood. As much as he appreciates the staff comments in terms of whether this project is compatible, Speidell does not believe the staff comments reflect the actual neighborhood as it exists at that location. The staff comments imply that this is a pristine acreage development with one residence built on each one-acre lot. If that was the case, he would agree that the Mandarin Court neighborhood would be a compromise, but the neighborhood that exists has had a lot of

additional construction in addition to the original single units. He displayed a graphic map showing the actual built environment that exists in this neighborhood. The neighboring house to the east has three moderately large out-buildings as part of its existing built environment. The neighbor to the east of that also has an outbuilding that is larger than the principal residence. Speidell contends that the proposal is not the sudden and dramatic change in terms of the neighborhood, but is actually very similar in terms of built density and open space.

Speidell displayed a graphic map of the screening they have already done and propose to do. They planted trees last summer and fall to start protecting this site from the neighborhood. He is proposing additional screening so that the neighbor to the north would not be impacted. These additional trees will provide a "fence".

In addition, Speidell has agreed to build the house as a single story, ranch type structure so that it does not look down into the back yard of the neighbor to the north.

Speidell purchased the poorest house in the neighborhood with the intent to remodel that house and make it attractive; and to build the new houses in what was a previously city-owned right-of-way and put them onto the tax rolls and make them a positive and supporting part of the community.

Having been in the landscape industry for 25 years, Speidell is convinced that the screening they are doing will prevent the aesthetics from being a negative to the larger neighborhood. They have turned the smallest side of one house towards the street and screened it and have moved things around to provide more screening.

Bayer noted that the letter from the homeowners association suggests that reducing the application to two homes, for total of three, would be more acceptable. Speidell's response was that it is an issue of cost dynamics. That is why he has stood his ground and looked for other alternatives and compromises in terms of creating additional screening.

Speidell agreed with the proposed conditions of approval set forth in the staff report should the Commission choose to recommend approval, except that he does not want public water. Speidell agreed that the street lighting is fine as set forth in the conditions.

Opposition

1. Gary Danek, 4800 Mandarin Circle, directly across the street from the proposed development, testified in opposition as President of the Pioneer/Mar-Ma-Ra-Lo Heights Homeowners Assn. This is a 35+ year old neighborhood with approximately 29 acreage lots that contain 26 single family homes. That is the way it was developed and has always been. This permit will not match the character of this neighborhood. There is no benefit or improvement for this neighborhood. There is a possibility for problems with sewage systems. They have been told that several septic systems in the neighborhood have been failing. He questions whether they should dig up lateral fields for a new development. These neighbors bought their homes because it was an acreage development; because it was a nice, quiet pristine type neighborhood. The applicant is not a member of their neighborhood so the neighbors are concerned about maintenance of the common area and the outlots. They were told that Speidell intends to move out of town when this project

is completed. This development could lead to the neighbors being forced to pay for assessments that they do not want, do not need and cannot afford. The sewer district cost each of them \$4,000 to \$7,000. This development will also put an increased load on an infrastructure built to support an acreage development. Adding these three homes will result in a 21% increase in traffic on the streets of the homes that front Mandarin Circle and a 13% increase for the entire neighborhood. He believes this will increase the traffic hazards.

Bayer confirmed that Danek's letter indicates that the neighborhood is willing to accept a total of three homes. Danek explained that at the moment, that would not be their position because Mr. Speidell has not met with the neighborhood since September of 1999 to offer any type of compromise.

2. Roger Schreiner, 4801 Mandarin Circle, who lives directly to the north of the proposed development, testified in opposition. He moved here for the rural atmosphere. He has appreciated the privacy of his 2-acre lot. One of the proposed lots backs up to the side of his immediate back yard. That back yard is to be only 10'. This means there will be a house overlooking his usable yard, destroying his privacy. The character of the neighborhood will be completely changed if this permit is allowed. The planting of trees on his side of the fence would create a see-through wall and will not hide a house that is towering over his back yard. He has had a good neighborhood relationship. His family is willing to agree to a compromise even though it would have an effect on his property. He would endorse the proposal if it were redesigned to eliminate the one house that overlooks his yard.

3. Ross Wunderlich, 4825 Mandarin Circle, adjacent to the east of the proposal, testified in opposition. He has reviewed the plan with the applicant. He stated that they do appreciate the screening with trees. But if they had a choice, they would prefer to have no additional development of this property. This is an acreage community and the additional three homes will not fit with the existing character of the neighborhood. He wanted to live in a more rural neighborhood. Three more homes will reduce the quality of life that they presently enjoy. Edenton South, Pioneer Greens, and Himark are already being developed nearby. The residents in this area believe they should have a say as to what happens inside their neighborhood.

4. Rick Willet, 4535 Pagoda Lane, testified in opposition. He is not directly affected by this proposal, but his neighborhood is. He bought his home a year ago and the reason this area was targeted is because they like the area as it is with a lot of room for kids to roam, with a friendly atmosphere. He focused his comments on Mr. Schreiner's house adjacent to the west of the proposal. One of the homes will be allowed to be built within 10' of the Schreiner property. With the ground elevation as it is, that house that is proposed to be built there would have to be elevated in such a way that the first floor would be at least half way up Mr. Schreiner's existing fence. He does not believe that trees can totally guard all the privacy that Mr. Schreiner experiences in his lot. This house should not be built. Willet requested that this proposal be denied.

With regard to the outbuildings referred to by the applicant, Willet believes that the new homes would also be able to erect outbuildings, making it a very congested area.

Staff questions

Schwinn noted the concern raised by the Fire Department and wondered about the rest of the neighborhood. Do they have any better fire protection? Ray Hill of Planning staff explained that when they were annexed into the city, they did not have water and they are not required to tie onto the water system. It is up to the owners to do that. The Fire Dept. originally noted that in these situations they have to contract with the rural fire district that have the pumpers to come and fight the fires. It is not a good situation but that is the best that they can do for this neighborhood. The Fire Chief also indicated that this is on an "availability" type situation, i.e. if the rural fire trucks are not available, they are without fire protection.

Taylor inquired about the landscaping elevation of the property in the proposal in relation with the existing properties. Hill advised that the applicant did not provide a grading plan so he could not answer the question. However, a grading plan will be required before building permits if the community unit plan is approved.

Response by the Applicant

Speidell rebutted, stating that while working on the Antelope Commons project, he dedicated an area in excess of 10 acres as a permanent public easement along the south portion of that piece. Abutting that is an already zoned 7-8 acre city park, and there will be more open space across on the Hampton property following Antelope Creek. In terms of this project's impact on neighborhood open space, Speidell contends that an area of 25-30 acres of open space is currently available to those neighbors. This project does not take away some really big resource. The quality of the space dedicated by that public easement through Antelope Commons is a timbered prairie and ponds, an interesting and diverse space that those neighbors can all use. The open space has been protected, dedicated and lives on as part of this area in spite of what is taking place.

With regard to the density, Speidell stated that the proposal is only two units per acre. He is asking for 4 homes on 2.12 acres with ½ acre+ spaces for each home. Hoegemeyer-Palmer put 7 units on a 1-acre lot at the entrance to Pagoda Lane. Speidell is trying to put a total of four lots on 2 acres and believes he is being prudent with the bulk of development occurring back on the lot, with minimum obtrusiveness to the neighborhood. Speidell noted that Wunderlich does not want to live in this community where he feels like the houses are right up against his; however, Wunderlich neighbors the existing house. The three proposed homes are over 150' away from Wunderlich's house. Speidell admits that the Schreiner home is much more impacted by the potential of the new house, but that is why he made the effort with a single story structure and large tree plantings. He showed pictures of some of the screening that has already been done on the existing house.

Speidell believes this development will actually protect the existing neighborhood. He has been taught that neighborhoods that don't grow and have new additions, tend to become stuck in time in a negative way and deteriorate and create problems. He looks at this as an opportunity to build new residences to provide additional support for the neighborhood so that they can share in the cost of any water or paving district that is created.

Finally, Speidell knows people do not like change, but if we hadn't allowed change to take place, Lincoln would not exist.

Schwinn was curious about how Speidell put this parcel together on this lot. It is Schwinn's opinion that the city should never have given Capitol Parkway away. Speidell responded, stating that when he did the Antelope Commons project, this triangular parcel was intended to be included. The transference in terms of title was not completed so it was left out of the application. When they sold the 70-acre parcel, he maintained private ownership of the triangular portion and bought it from the previous owners to do this project. He retained the rights by contract to what would be the neighboring lot if and when the Antelope Commons project is developed by its current owner.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 5, 2000

Schwinn moved approval, with conditions, as set forth in the staff report, seconded by Duvall.

Schwinn believes that the positive aspects of this application, including the open space, the pond and the plantings already done that this neighborhood already enjoys, far overwhelm any detriment that there may be to the neighborhood. He has a hard time seeing any detriment to the neighborhood. There are duplexes at the very gate of this community and they do not appear to be a detriment to the neighborhood. He believes this is a good project that is well thought out. A 23,000 sq. ft. lot is not a small lot.

Duvall commented that there is going to be a lot of development in this area in the next two years. This area will become highly populated and 23,000 sq. ft. lots will actually be a luxury.

Hunter is opposed to the density. Anytime someone has an acreage it is within their purview to put an outbuilding. An outbuilding does not require another resident, more traffic, or new sewer or water. There is a lot of difference between outbuildings and a residence. She believes that most of these lots are around two acres and the difference in putting a residence and an outbuilding on 2 acres versus 4 houses is significantly different.

Newman stated that she is neutral. She knows Speidell will not do anything less than absolute quality, but she can hear Schreiner's argument that anything within 10' of his lot line will impact his property. She wishes the applicant could work with Schreiner in terms of moving that house. She will vote in favor, but she sees Schreiner's point and she hopes Speidell will work with him.

Taylor is concerned for the neighbors. He wants to know more about the grading. With the opposition by the neighbors, he will not support the project. There needs to be an appeasement to the neighbors.

Hunter does not want the neighbors to be "forced" to accept a redevelopment of their neighborhood. She does not like to create more in a smaller space. We have to be sensitive to the way the neighborhood was originally developed and be consistent.

Bayer stated that he will vote against the approval. The perception of being one house per 23,000 sq. ft. is not reality. All four houses are on 1 acre with a big pond behind. We are a community growing in every direction, and in every direction we are surrounded by acreages. How we develop those acreages into our community is important. We need to be able to respect acreage lifestyle. We need to respect the rights of neighborhoods. We have an opportunity to protect this acreage neighborhood and maybe set some precedence for other acreages we bring into the city later on.

Motion for approval failed 3-3: Schwinn, Newman and Duvall voting 'yes'; Taylor, Hunter and Bayer voting 'no'; Krieser, Steward and Hopkins absent.

This application is held over for administrative action on April 19, 2000. Public hearing has been closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 19, 2000

Members present: Taylor, Krieser, Schwinn, Steward, Carlson, Newman and Bayer; Hunter and Duvall absent.

Bayer advised that the public hearing has been closed; however, the Commission does have the right to ask questions of individuals or could move to reopen public hearing or act on the application. The Commission received a revised site plan and two letters from neighbors from the applicant today. Bayer does not believe the site plan is changed so significantly that the Commission couldn't take action approving three dwelling units as opposed to four, and it would then go on to the City Council for another public hearing.

Newman wants to know whether this is acceptable to the neighbors. Bayer asked the Law Department if the neighbors in attendance could be asked to speak. Rick Peo of the City Law Department advised that if the Commission is asking questions, it is public testimony or new information. He believes the Commission would be treading on thin ice by allowing the public to speak since the public hearing has been closed and it defeats the public process. Peo stated that after looking at the revised plan more thoroughly, it is in effect a new site plan. If the Commission wants to approve three units, there is not a staff report listing any conditions of approval based on three units. He does not know what would be sent to City Council without the conditions from staff for three units versus four units. It may be better to look at this as an amended application that really needs to have public hearing. Based on the information presented, it appears the applicant is attempting to amend his application and is no longer going forward with four units, and Peo would advise reopening the public hearing.

Newman made a motion to reopen public hearing in two weeks on May 3, 2000, seconded by Taylor and carried 7-0: Taylor, Krieser, Schwinn, Steward, Carlson, Newman and Bayer voting 'yes'; Hunter and Duvall absent. The revised application will be advertised and notification letters will be mailed to the property owners.

REOPENED PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 3, 2000

Members present: Schwinn, Duvall, Hunter, Carlson, Newman and Bayer; Taylor, Krieser and Steward absent.

Planning staff recommendation: Denial.

Ray Hill of Planning staff submitted a letter in support from Roger and Rosanna Schreiner.
Proponents

1. **Richard Speidell**, the applicant, presented the revised application for three dwelling units to make the project more palatable for the neighborhood and the Commission. Speidell initially met with the neighborhood over six months ago and the primary concern of the neighbors was not creating any special assessment district. Speidell worked hard in the initial design of the project to not have any special assessment districts. He had resistance from the neighborhood because he was asking for three additional lots, including the existing residence, for a total of four lots. Many of the neighbors said that a total of three lots would be more acceptable, including the existing lot. He went back to the neighbors and they suggested reducing the additional number of lots to two. He worked with Mr. Schreiner and tried to address the Planning Department's comments. He had been told by the staff that if he reached a density of approximately .75 acre per lot the development would be consistent with the larger neighborhood. The proposal as drawn today with only two new lots instead of three has that kind of density and he was surprised to see that the Planning Department still recommended denial.

Speidell indicated that he had another meeting with the neighbors last week. At that meeting, the President of the association and another property owner agreed that the revised plan was a quality plan. Speidell requested approval of two new lots, for a total of three lots.

Newman inquired about the "no trespassing" sign that is in place. Is that area going to be open to all the neighbors? Speidell stated that he has the sign up because it is what he considers to be an "attractive nuisance" represented by the pond. This is additionally complicated by the fact that they created above water access to islands in the pond. Without posting it as private property, if anyone who wandered on the site fell in the water and floundered, he could be sued. Until the property was developed, he aggressively posted it to try to prevent that type of reality. He has no specific perspective in terms of saying this area is off limits to the neighborhood. Schreiner has used the property extensively. He volunteered that he is not excited about creating a recognized or defined public access way to what becomes a much larger park complex which will have road access and bike trail access. However, he has always invited the neighborhood to use the space.

Opposition

1. **Gary Danek**, 4800 Mandarin Circle, testified as President of Mar-Ma-Ra-Lo Heights Association, in opposition. He concurred that the neighbors did meet with the applicant on April 27th. Nothing had changed from the revision submitted at the last meeting. Speidell talked about the concerns about compatibility but believes that .75 acre is more acceptable. Danek pointed out that one of the buildable lots is 7600 sq. ft.; one is 9700 sq. ft. and the third is 20,000 sq. ft. Those

are not acreage lots that you would find in a natural rural type setting acreage development. About 30,000 sq. ft. of the lot is paving and private roadways. This is a three-home cul-de-sac put in the middle of a rural acreage development. He does not believe this fits the character of the neighborhood. The neighbors appreciate the fact that the applicant has made some changes and dropped the one house, but it is not compatible. In polling the neighborhood, 14 paper ballots were received, 7 verbal responses, 4 no responses and then Mr. Speidell. Of those 21 verbal and paper responses, 19 oppose any development on the property; 2 are okay with it, being Roger Schreiner and another on the north end of Pagoda Lane, and then Richard. Most of the neighborhood, 90%, is against this development.

Danek suggested that what is decided with this application will have a major impact on all these acreage developments as they are brought into the city. If you approve this, then it will be difficult to deny a similar plan in the future in another neighborhood.

Based on the fact that this does not fit the character of the neighborhood and the staff recommendation of denial, Danek stated that the neighborhood requests that the permit be denied.

Danek advised the Commission that the neighbors did tell Speidell that if the development is allowed to go through, they think he will do a good job. But they also said that it doesn't belong in this neighborhood. There are ample numbers of residential size city lots available to do this type of development.

Response by the Applicant

Speidell challenged the comment about paved surfaces – the paving area is approximately 200' in length and has an average width of 16', which is about 3,000 sq. ft. An additional 50% of that is parking. Therefore, total paving is just about 5200 sq. ft. The paving is actually less than 5300 sq. ft. in total, including parking areas for that driveway.

Speidell stated that he appreciates that the neighborhood has had a lot of concern, but the perception from the street of what this project will be on a visual sense is that the apparent house will still be the only remaining property. It would look the same as it does today until you enter the development. The other houses have been moved way back into the property. He does not believe the small amount of increase in traffic by two houses is a significant issue.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 3, 2000

Hunter moved to deny. Motion failed for lack of a second.

Schwinn moved approval, with conditions, seconded by Duvall.

Hunter commented that in this current day when there is acreage development, it usually involves an association and that association draws out the guidelines that say these are minimum lot acreages. As an example, Silver Springs is minimum 3 acres, and it takes a 100% vote of the property owners to amend the size of the acreages. If this development was brought down to two

houses where there was some real consistency with the homes that exist and the acreages that are out there, it would be very consistent, but it's not. She believes that we have to look to the people that have been in that neighborhood and developed those homes with an expectation that they would continue to be acreages sites and not violate the situation that exists.

Newman stated that she is totally on the fence on this one because she thinks both sides made extremely valid points. As far as planning principles, she agrees with Hunter. She referred to the slip-in area at 48th & "A" – it's hard to see from the street but it's a wonderful little cluster and that is what she should see this developer putting in here. She is not comfortable with making this decision. She indicated that she will vote with Hunter so that there are not 5 votes because she would like to have a larger group to have a valid discussion.

Bayer suggested that it punishes both sides by keeping the project at the Planning Commission level. He recommended that the Commissioners vote their hearts and what they believe.

Hunter thinks the Commissioners look for guidance from the neighbors. She realizes that when people make a land investment and they are trying to make a profitable situation, they have to massage it to make it work. But that may be a violation to the neighborhood. We are making these little exceptions along the way and these become the bigger exceptions. If this was a request for just one more dwelling unit, she would support it.

Duvall believes that the applicant has gone the extra mile to work with the neighbors to make it fit. The revised application is a better project. We're not violating trust. It is an effective use of the land.

Motion for conditional approval failed 2-4: Schwinn and Duvall voting 'yes'; Hunter, Carlson, Newman and Bayer voting 'no'; Taylor, Krieser and Steward absent.

Bayer wants to be fair to both sides. It is not fair to the neighborhood or the applicant to continue to do this. There comes a point when the applicant and the neighborhood would like to move this forward for a decision.

Hunter moved to deny, seconded by Newman and failed 4-2: Hunter, Carlson, Newman and Bayer voting 'yes'; Schwinn and Duvall voting 'no'; Taylor, Krieser and Steward absent.

This application is held over for administrative action on May 17, 2000.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 17, 2000

Members present: Steward, Duvall, Taylor, Krieser, Carlson, Newman and Bayer; Hunter and Schwinn absent.

Planning staff recommendation: Denial.

Ray Hill of the Planning Department submitted a letter in opposition received from Gary Danek, President of the Pioneer/Mar-Ma-Ra-Lo Homeowners Association.

Steward moved approval, with conditions, seconded by Newman.

Steward commented that this application has had extensive review. We have all had a lot of time to contemplate. He agrees with Mr. Danek that this perhaps is setting a precedence, although each case will need to be judged upon its own merit. This application is creating smaller lots out of an acreage within an acreage neighborhood. This is precisely why he has been persistent about the Comprehensive Plan being more specific about where acreages are to be located. Those located within the growth pattern of the city are sooner or later, lot by lot, going to face this economic as well as planning concern. In this particular case, he believes the applicant has done a respectable job of respecting sight lines, of taking advantage of the topography, and assuring landscaping that will protect the sight lines of adjacent properties. It will be within the city service limits, and sooner or later, these acreages are going to over-tax, by proportion, the services of the city. However, he believes that this project is a means, an example, a way, of increasing the density in a very well-planned and well thought-out way.

Duvall agrees with Steward. It's obvious that as the city grows, these things are going to happen. A policy is going to have to be developed. These acreages are going to be affected and probably shrunk in size.

Newman commented that she will justify voting in favor because it is a total of two acres and from the street you will not see all three houses because of the landscaping. She is concerned that down the road we will run into this again. She wants to see a plan. But, she believes this one will be done well.

Carlson stated that he would echo all comments he has heard but he is not arriving at the same opinion. He walked the site and was absolutely impressed with the amenities and the degree at which Speidell has sited the properties and worked with the neighborhood. But, he has a problem with the ad hoc decision-making. He voted against previously because we need a comprehensive policy in place. If this decision serves as the beginning of that, then so much the better. We need to have a policy in place that talks about where appropriate acreage development is going to take place and what will happen when the city annexes and takes these in. He did not find a lot of guidance in the Comprehensive Plan. He referred to p.52, where it talks about the goals of Low Density Residential: Preserve, protect and promote the character and unique features of rural and urban neighborhoods. So, in the absence of anything else pointing him in any other direction, he is starting to lean in that direction. Maybe the community needs to make the decision on these acreages. We have a history of community involvement and he believes we need to get a policy in place before we make too many more decisions like this. He will vote against this development. However, if it is approved, he does not believe we can find a better applicant than Speidell to make that policy. He is not comfortable with making ad hoc policy at this point.

Taylor indicated that he has been torn from the beginning. He is in favor of what they are doing, but his concern has been the neighbors and their future view of that area. A person wants to vote both ways, but at this point he really thinks the applicant has done a commendable job and the best he could to appease the neighbors. He does not like to vote against the neighbors, but he will be voting in favor.

Bayer believes there is a difference here between “acreages” in the county and “acreage neighborhoods” in the county. He thinks this one is an acreage neighborhood. This was developed as a neighborhood with the intent of having a number of 3-acre or smaller lots built into a neighborhood. He is supporting the neighborhood concept as opposed to the development concept in this case. He will vote against the motion.

Motion for approval of the revised application as submitted on April 19, 2000, with conditions, carried 5-2: Steward, Duvall, Taylor, Krieser and Newman voting ‘yes’; Carlson and Bayer voting ‘no’; Schwinn and Hunter absent.